Supreme Court, U.S.
FILED
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OFFICE OF THE CLERK
No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

Dennis Theriot; Ann Rodriguez; Ronald Perrin; Norman A. Ronquille; David J. Dowell; Iris C. Isenmann; Herman J. Carbo; Maplewood Civic Association, Inc.
Petitioners,

v.

Parish of Jefferson, State of Louisiana; T. J. Ward, also known as Butch; Donald Jones; et al.
Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

APPENDIX II

Haywood H. Hillyer III, La. Bar No. 6925
Attorney-at-Law
P.O. Box 15521
New Orleans, Louisiana 70175-5521
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Facsimile: (504) 899-4851
Counsel of Record

Of Counsel:
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1449 Magazine Street
New Orleans, Louisiana 70130
Telephone: (504) 524-8600

APPENDIX E

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

Filed OCT 9 96

DENNIS THERIOT, ET AL CIVIL ACTION

VERSUS 95-2453

THE PARISH OF JEFFERSON, ET AL SEC. "K"(l)

Defendant-Parish of Jefferson seeks a protective order quashing the depositions of its counsel of record, Harry Rosenberg and M. Nan Alessandra, and the subpoenas duces tecum served upon them. Defendant argues that plaintiff-intervenor Cleta White seeks priviledged information obtained by attorneys Rosenberg and Alessandra during said attorneys' representation of defendant in a prior similar action entitled "East Jefferson Coalition v. Parish of Jefferson", CA#86-3668"M".

Plaintiff-intervenor counters that defendant's attorneys have "unique and exclusive" ability to state "how and why the particular remedy to the original *East Jefferson Coalition v. Parish of Jefferson* lawsuit came about ... and the fairness and legality of the particular remedy." (Quoting p. 4, White's Memorandum in Opposition to Defendant's Motion to Quash...)

Federal Rule of Civil Procedure 26(b)(1) allows for discovery "regarding any matter, not priviledged, which is relevant to the subject matter involved in the pending action..." The party seeking to block its attorney's deposition concerning relevant information will succeed if it establishes undue burden or opposition measured by (1) the quality

of information in the attorney's knowledge, that is, whether the deposition would be disproportional to the discovering party's needs; (2) the availability of the information from other sources that are less intrusive into the adversarial process; and (3) the harm of the party's representational rights of its attorney if called upon to give deposition testimony. *Johnston Dev. Group v. Carpenters' Local 1578*, 130 F.R.D. 348, 353 (D.N.J. 1990); *N.F.A. Corp. v. Riverview Narrow Fabrics, Inc.*, 117 F.R.D. 83 (M.D.N.C. 1987).

Taking the deposition of opposing counsel is a practice that has long been discouraged as disruptive of the adversarial system and one which should be employed only in limited circumstances. *Shelton v. American Motors Corp.*, 805 F. 2d 1323, 1327 (8th Cir. 1986); *See also in re Taxable Municipal Bonds Litigation*, Civ. A. No. MDL 863, 1993 WL 45156, at *2 (E.D. La. Feb. 12, 1993). Nevertheless, the Supreme Court has made clear that when appropriate, an attorney may be forced to disclose those facts in his possession that are relevant to a lawsuit. In re: *Taxable Municipal Bonds Litigation, supra.* (citing *Hickman v. Taylor*, 329 U.S. 495, 511, 67 S. Ct. 385, 393-94, 91 L.Ed. 451 (1947)). The deposition of an attorney may be "both necessary and appropriate" where the attorney may be a fact witness,, such as an "actor or viewer," rather than one who "was not a party to any of the underlying transactions giving rise to the action," or whose role in a transaction was "speculative and not central to the dispute. *Johnston*, 130 F.R.D. at 352 (citations omitted).

The plaintiff -intervenor has already received certain nonpriviledged documents from the Department of Justice relative to the redistricting of the Jefferson Parish councilmanic districts and Jefferson Parish's application to the

Department of Justice for pre-clearance. Moreover, during the last possible week of discovery, plaintiff-intervenor has noticed the depositions of eleven (11) potential witnesses, current and former council members and Jefferson Parish employees who were involved in the formation or reformation of the council districts. Yet, five weeks prior to trial, in the midst of the defendants' trial preparation, plaintiff-intervenor has subpoenaed for deposition the defendants trial attorney and counsel of record.

Clearly, the council members, certain Jefferson Parish employees, and Department of Justice personnel should have information concerning the councilmanic structure of Jefferson Parish and should be able to testify as to any non-priviledged information sought by the plaintiff-intervenor, such that the depositions of attorneys Rosenberg and Alessandra are not necessary.

The Fifth Circuit has stated that "[t]he attorney-client privilege 'was intended as a shield, not a sword. When confidential communications are made a material issue in a judicial proceeding, fairness demands treating the defense as a waiver of the privilege.' " *Conkling v. Turner*, 883 F. 2d 431, 435 (5th Cir. 1989). Accordingly, "the attorney-client privilege is waived when a litigant 'places information protected by it in issue through some affirmative act for his own benefit, and to allow the privilege to protect against disclosure of such information would be manifestly unfair to the opposing party.'" Id. In *Conkling* the Fifth Circuit held that where defendants raised a defense based on statute of limitations and plaintiff responded with a tolling argument based on his lack of knowledge, plaintiff had placed his knowledge at issue and defendants were entitled to depose plaintiff's attorney about the timing and extent of plaintiff' s attorney

about the timing and extent of plaintiff's knowledge about his claim. Id. at 434-35.

Plaintiff-intervenor contends her "... inquiry sought here ... in no way seeks to have these (attorney) witnesses waive the attorney-client privilege, thus distinguishing this matter from that of *Conkling v. Turner*, ..." In view of that concession and the record as a whole, litigants here have not made confidential communications a material issue in these proceedings. Therefore, there has not been a waiver of privilege objections by defendant.

Plaintiff-intervenor has begun the process of taking depositions of certain Jefferson Parish officials and employees who should have the same information that is being sought from the Parish's attorneys. Further, if, as suggested by plaintiff-intervenor, the U.S. Department of Justice's involvement "in fashioning a remedy to the earlier litigation will likely play a key role in determining the legality of the current Parish of Jefferson Parish Council districts", plaintiff -intervenor should have sought discovery from the Department of Justice officials with direct knowledge about the Department's involvement in the "East Jefferson Coalition" case.

Plaintiff -intervenor's premise that defendant's attorneys are the only persons with information about how or why re-districting or a remedy occurred is rank speculation hovering near the absurd.

Paraphrasing Judge Schwartz in *Collins v. Coastline Construction, Inc.*, CA #92-16"A", 1992 U.S. Dist. LEXIS 7076 (E.D. La. May 14, 1992), plaintiff -intervenor has put the cart before the horse by noticing these attorneys' depo-

sitions. Even by her own admission, plaintiff-intervenor has already obtained Attorney Alessandra's testimony about the prior litigation via transcript made of her examination before the Court on June 24, 1991. The latter examination occurred in connection with a Rule 11 proceeding in the "East Jefferson Coalition" case. In explaining her client's attempted compliance with court orders, Attorney Alessandra described how the council confected a plan and named the Department of Justice official involved in achieving compliance with a U.S. Fifth Circuit mandate to receive a redistricting plan. *See East Jefferson Coalition for Leadership and Development, et al v. Parish of Jefferson, et al,* 926 F.2d 487 (5th Cir. 1991).

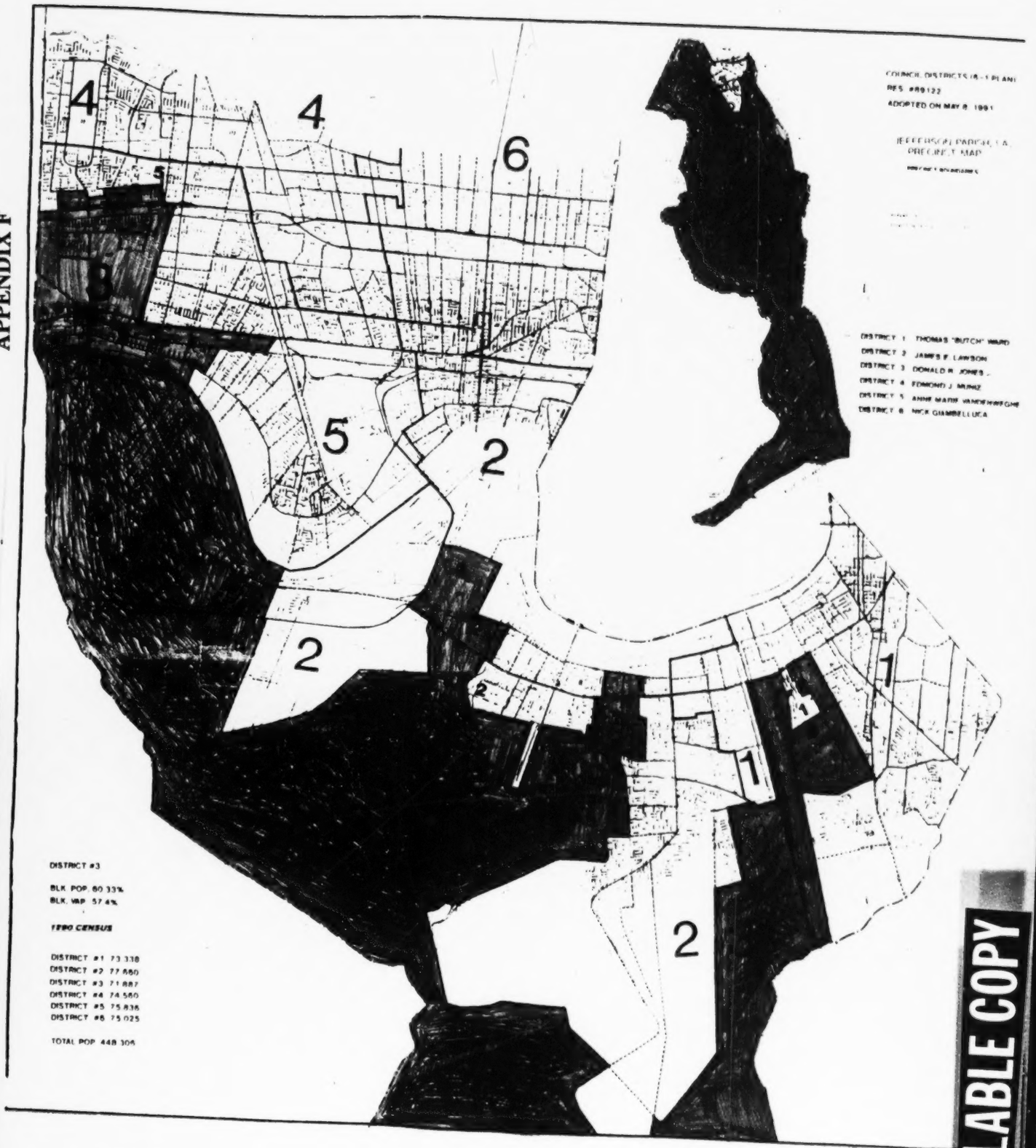
Defendant has clearly shown that there are other persons who should be deposed instead of prevailing upon their attorneys for information that would invade the attorney-client privilege and the attorneys' work product. Further, after balancing plaintiff-intervenor's speculative need to depose defense attorneys at the end of discovery deadlines and on the eve of trial with the significant disadvantages this creates with a party's right to receive and an attorney's duty to provide effective representation near the end of a long and difficult case, we opt for the latter based on the foregoing analysis.

It is therefore ordered that defendant Parish of Jefferson's motion to quash deposition notices and related subpoenas duces tecum served upon their attorneys of record be and is hereby GRANTED.

New Orleans, Louisiana, this 9th day of October, 1996.

/S/ Ivan Lemelle

UNITED STATES MAGISTRATE JUDGE



MAP ONE - Current District 3 without Racial Characteristics

RED - Indicates all precincts drawn to be included within the current District 3.

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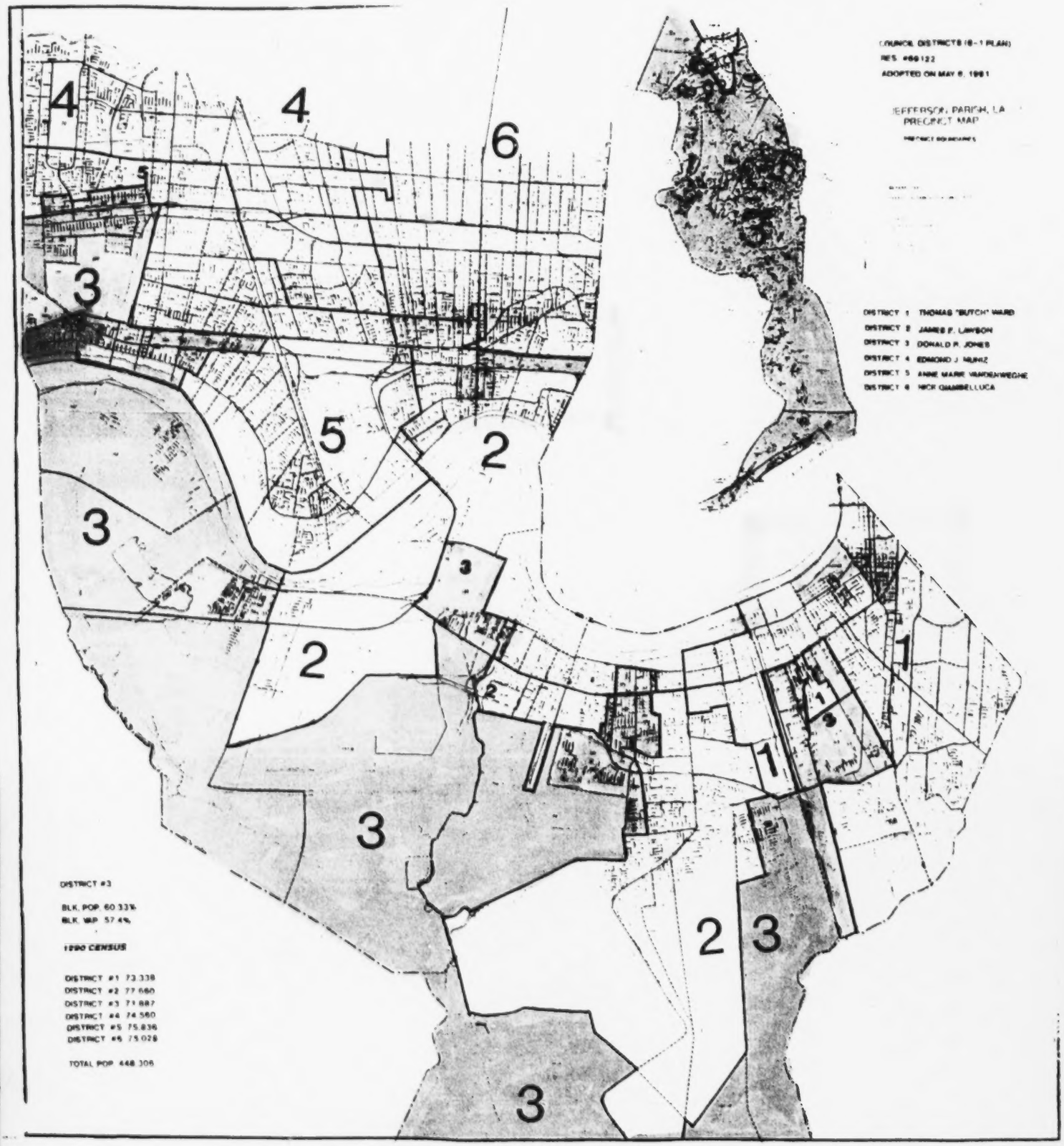
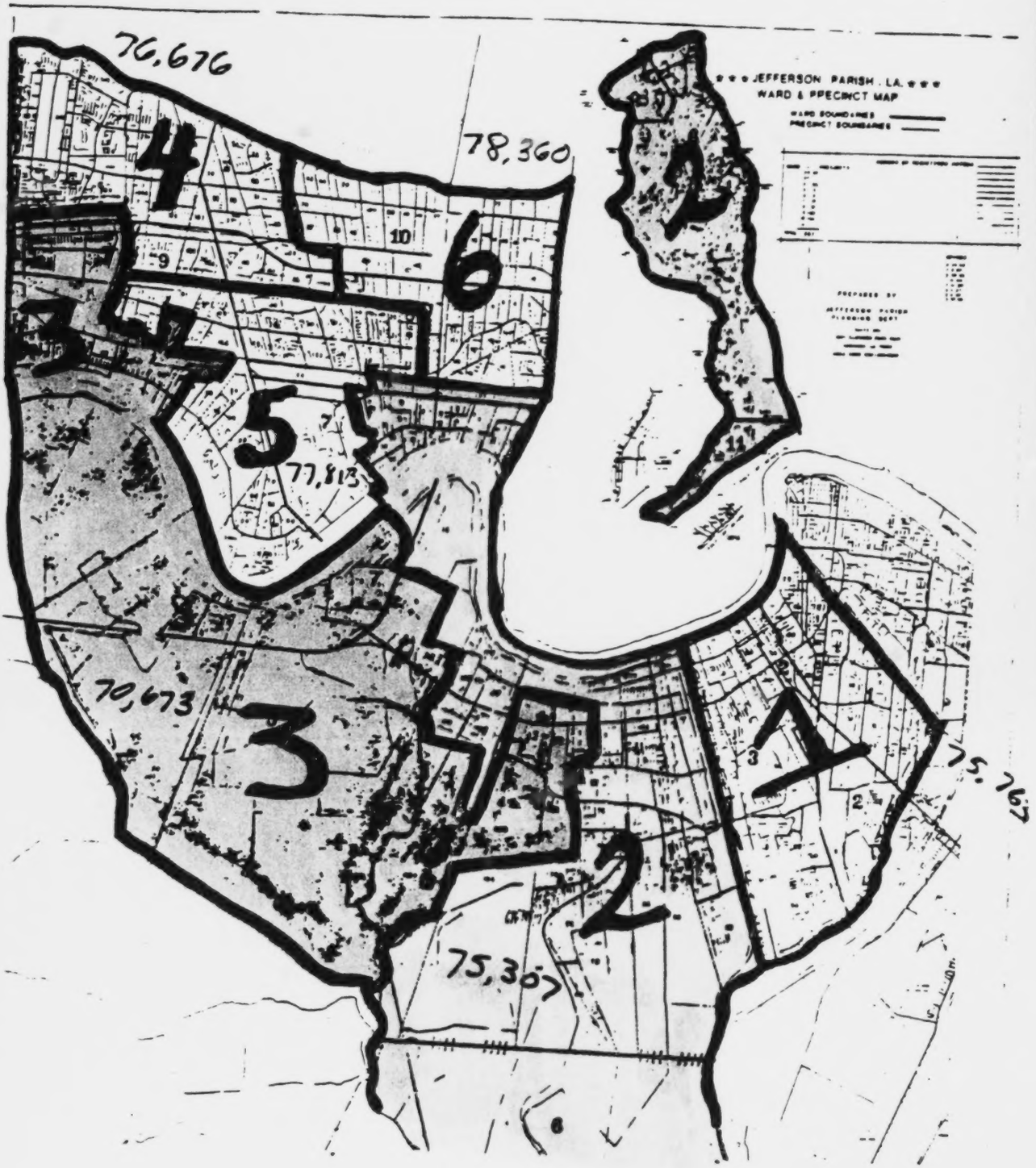


MAP TWO - District 3 with Racial Characteristics

BLUE - Indicates all **BVAP** majority precincts drawn to be included within the current District 3.

PINK - Indicates all white majority precincts drawn into the current District 3.

ORANGE SQUARES - Highlight the only two locations, also shaded **BLUE**, of **BVAP** majority precincts of the Parish not drawn into District 3. (The Gretna/McDonoughville and Shrewsbury Areas)



6 Single Member Districts
1 At-Large District
Black Majority District = District 3

MAP THREE - March, 1990 Interim " 6 -1 " Districting Plan.

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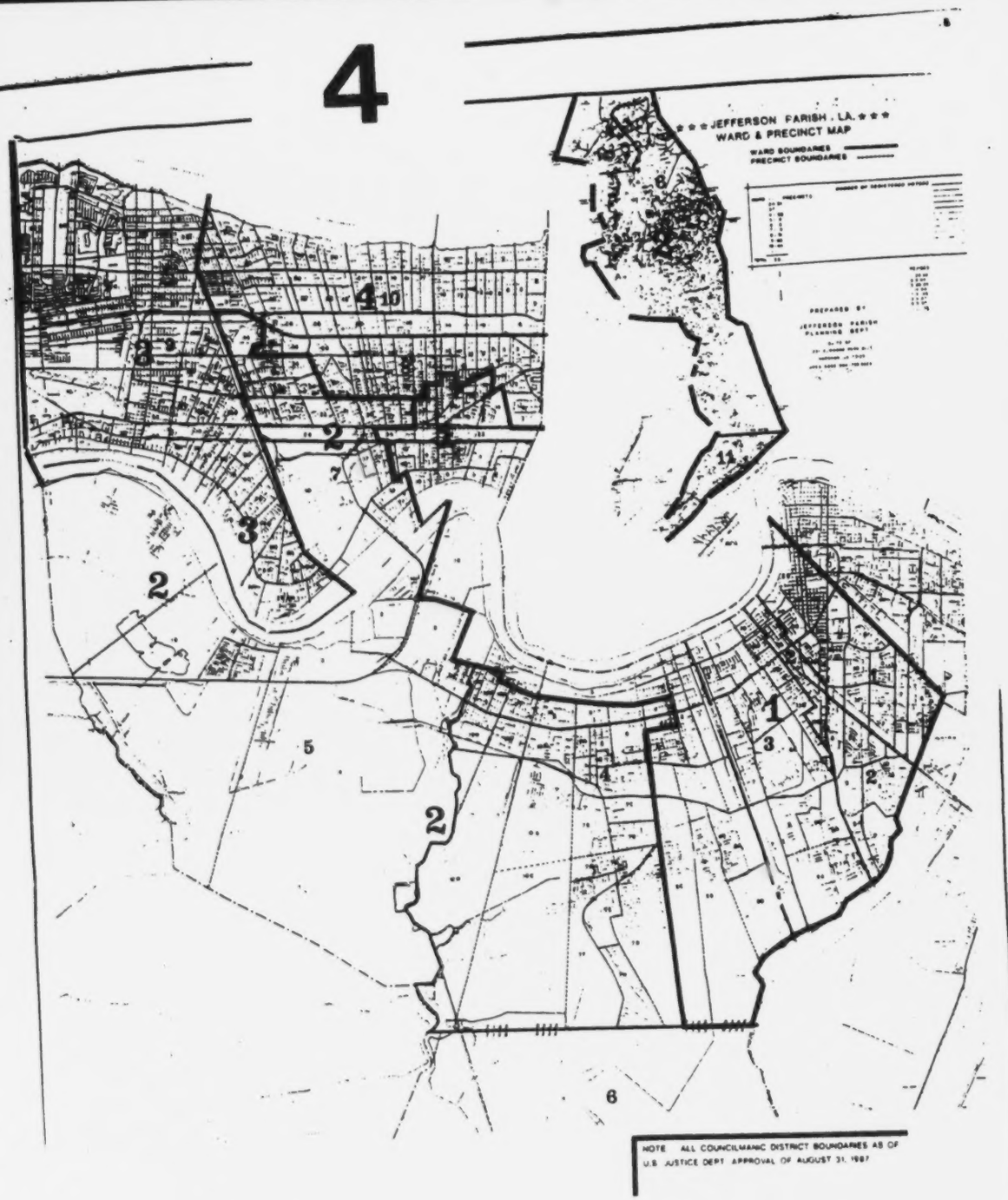
MAP FOUR - February 1990 " 6 -1 " Interim Districting Plan.

Interim = 1 Judge Parish
Single Member
Districts = 1-6
Black Majority
District = 3



☆☆ COUNCILMANIC DISTRICT MAP ☆☆

CURRENT ELECTED OFFICIALS

ROBERT B. EVANS, JR.
CHAIRMAN

LLOYD F. GIARDINA
AT-LARGE DISTRICT # 1

ED MUNIZ
AT-LARGE DISTRICT # 2

LARRY HOOPER
DISTRICT # 3

THOMAS J. WARD
DISTRICT # 1

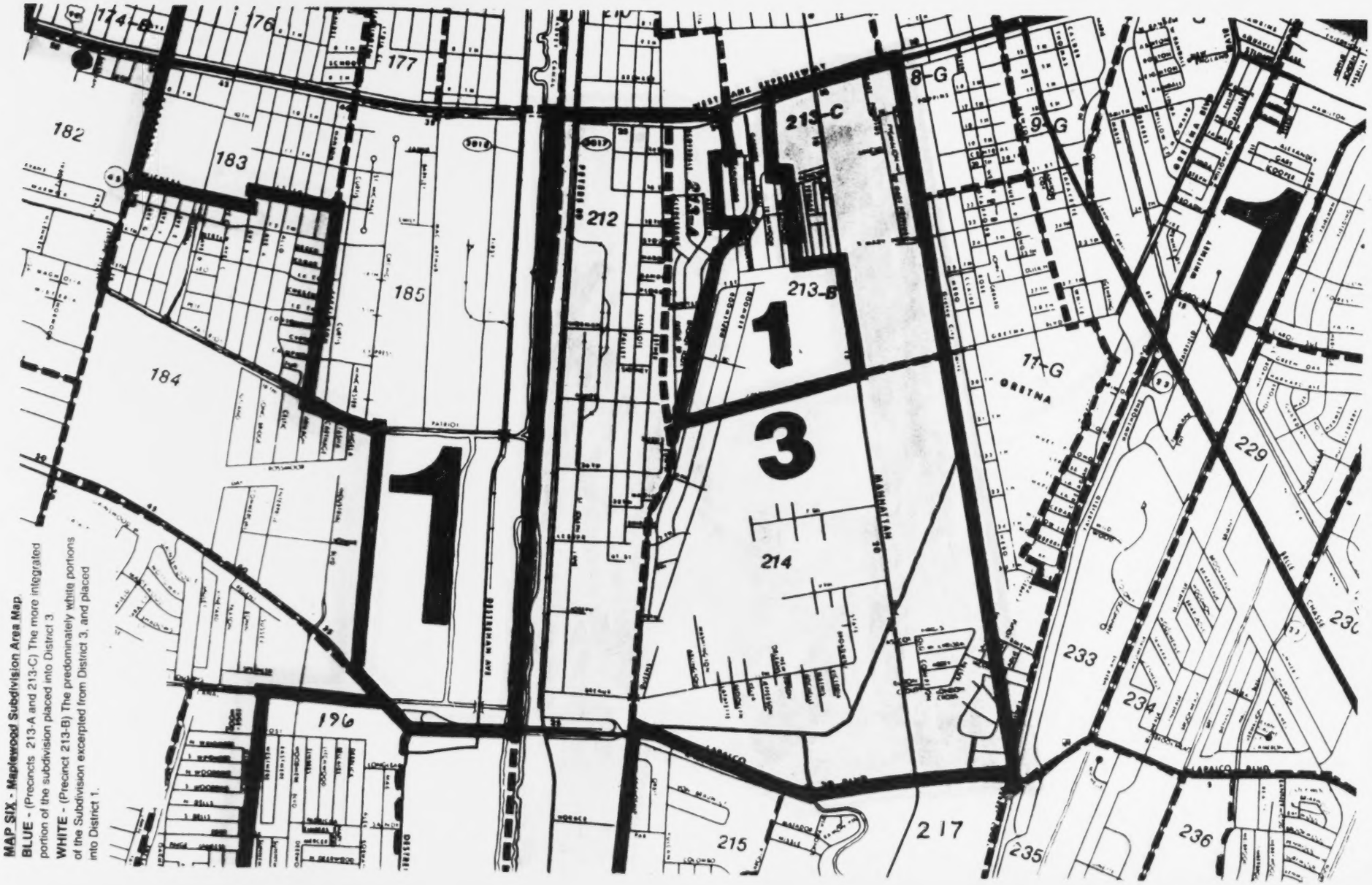
JAMES E. LAWSON JR.
DISTRICT # 2

ROBERT L. DEVINEY, JR.
DISTRICT # 4

REVISED AUGUST 31, 1987

PREPARED BY JEFFERSON PARISH PLANNING DEPT

MAP FIVE - " 4 - 2 -1" Districting Plan last used by the Parish to hold elections in 1987.



MAP SIX - Maplewood Subdivision Area Map

BLUE - (Precincts 213-A and 213-C) The more integrated portion of the subdivision placed into District 3

WHITE - (Precinct 213-B) The predominately white portions of the Subdivision excerpted from District 3, and placed into District 1.

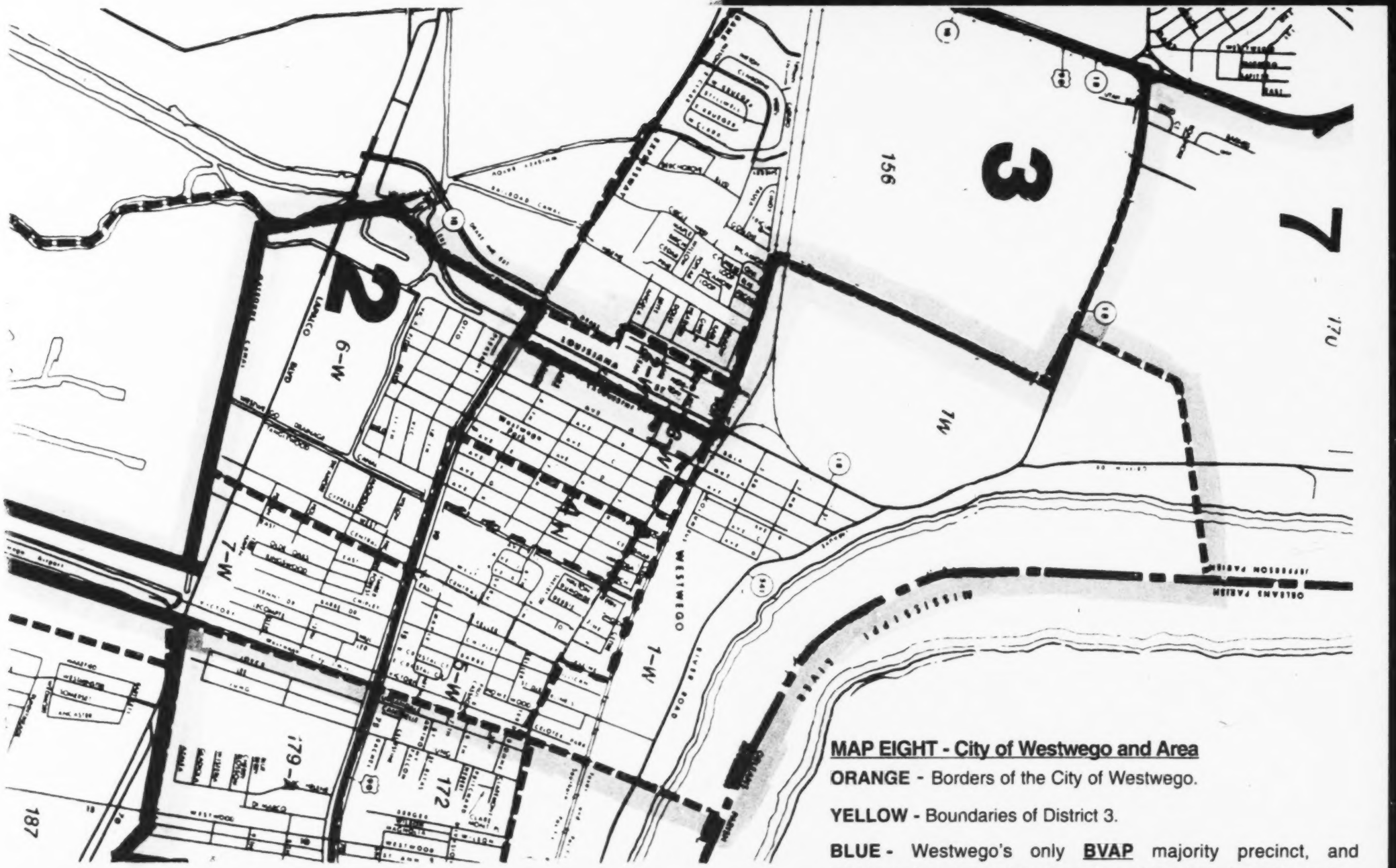
MAP SEVEN - City of Kenner and Surrounding Area

BLUE - **BVAP** majority precincts of the Kenner Area placed into District 3.

PINK - White majority precincts of the Kenner Area placed into District 3.

[redacted]

[redacted]



MAP EIGHT - City of Westwego and Area

ORANGE - Borders of the City of Westwego.

YELLOW - Boundaries of District 3.

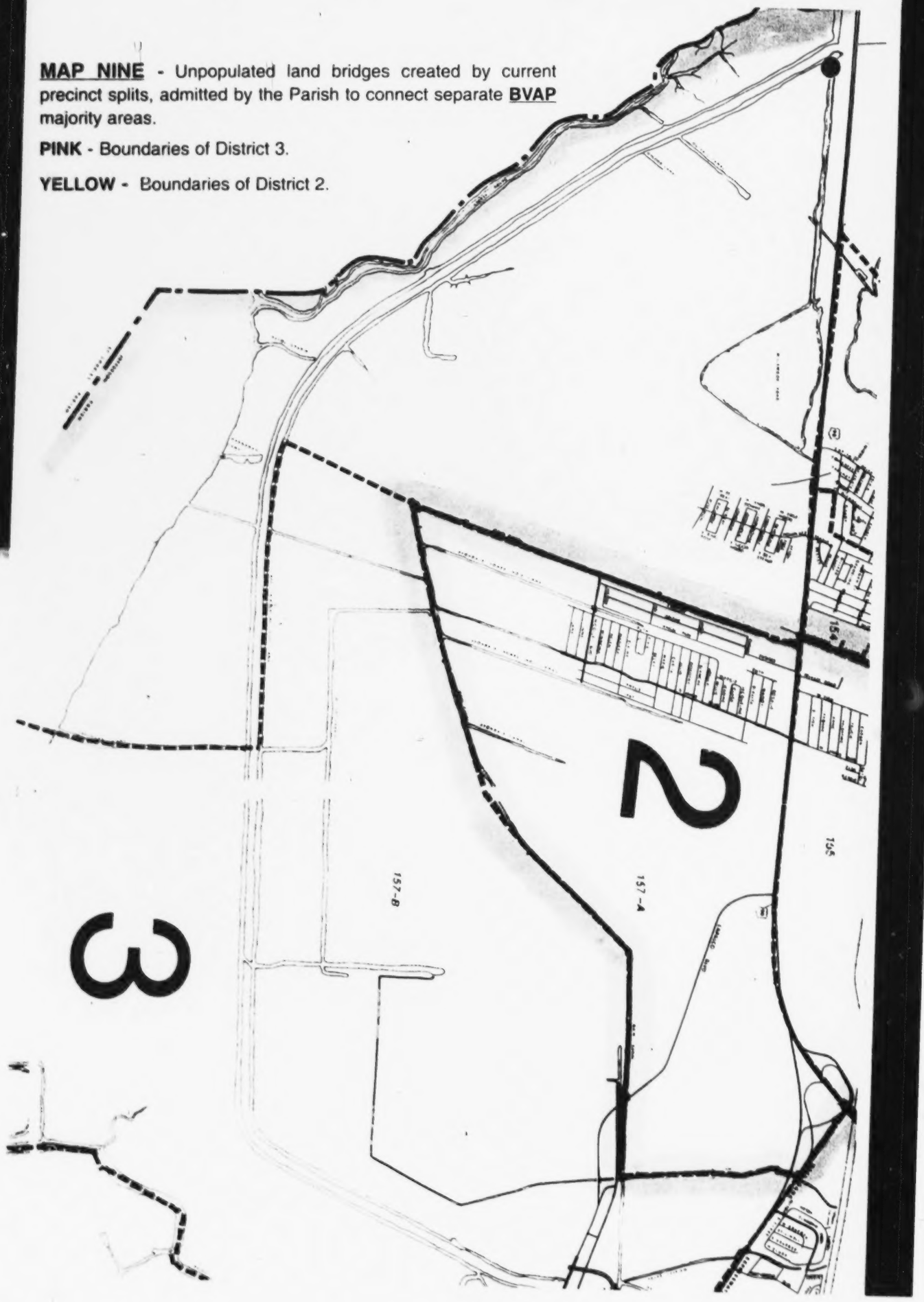
BLUE - Westwego's only **BVAP** majority precinct, and Westwego's only precinct drawn to be included within District 3.

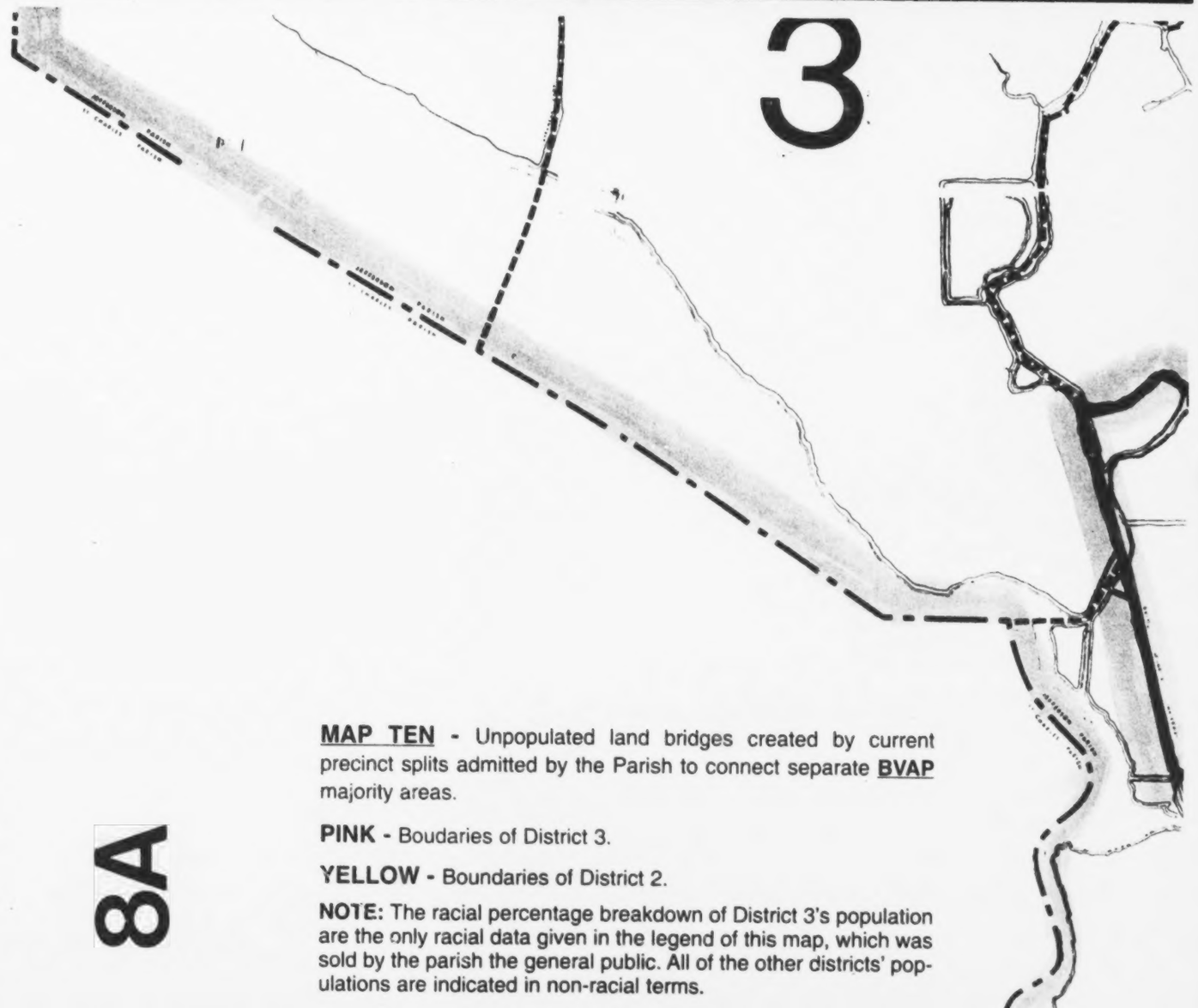
[redacted]

MAP NINE - Unpopulated land bridges created by current precinct splits, admitted by the Parish to connect separate **BVAP** majority areas.

PINK - Boundaries of District 3.

YELLOW - Boundaries of District 2.





DISTRICT #3

BLK. POP. 60.33%
BLK. VAP 57.4%

1990 CENSUS

DISTRICT #1 73,338
DISTRICT #2 77,660
DISTRICT #3 71,887
DISTRICT #4 74,560
DISTRICT #5 75,836
DISTRICT #6 75,025

TOTAL POP. 448,306

8A

MAP TEN - Unpopulated land bridges created by current precinct splits admitted by the Parish to connect separate **BVAP** majority areas.

PINK - Boudaries of District 3.

YELLOW - Boundaries of District 2.

NOTE: The racial percentage breakdown of District 3's population are the only racial data given in the legend of this map, which was sold by the parish the general public. All of the other districts' populations are indicated in non-racial terms.

APPENDIX G

JEFFERSON PARISH
LOUISIANA

JEFFERSON PARISH COUNCIL
RESEARCH & BUDGET ANALYSIS STAFF

Kenneth W. Hughes
Director

August 22, 1991

Mr. John Tanner
U. S. Justice Department
Civil Rights Division
H.O.L.C. Building
Room 716
Washington, D.C. 20001

EXHIBIT 8

Dear Mr. Tanner:

As per our telephone conversation as of this date, I am transmitting the following information to you by fax relative to the request for preclearance of the Jefferson Parish Councilmanic district reapportionment plan and the precinct and polling place changes adopted by the Jefforson Parish Council on August 21, 1991, necessary for the October 19th elections:

1) Emergency Ordinance No. 18357 which creates new precincts for the Councilmanic district reapportionment plan ordered to be implemented by the U.S. Fifth Circuit court of Appeals;

2) Resolution No. 69917, which names polling places for the precincts created by Emergency Ordinance At No. 18357;

3) Resolution No. 69896, which moves the polling place for Precinct 1-K;

4) Resolution No. 69898, which moves the pollinq place for Precinct 38;

5) Resolution No. 69899, which moves the polling place for Precinct 84;

6) Resolution No. 69900, which moves the polling place for Precinct 185; and

7) Resolution No. 69901, which moves the polling place for Pricinct 127.

Copies of all of these documents, with the exception of Resolution No. 69898, were faxed to you prior to adoption on Tuesday, August 20th.

The reasons for the division of precincts by Emergency Ordinance No. 18357 are as follows; Precincts One-L One Hundred Fifty Seven, One Hundred Ninety-Four and Two Hundred Forty-Six were divided to create "land bridges" to connect the areas in District 3, the black majority district. The portions of these precincts added to District 3 are not populated. Precincts Thirteen-K, One Hundred Seventy-Four, One Hundred Seventy-Nine, and Two Hundred Thirteen were divided to add black-majority areas of these

precincts to District 3. The addition of these areas enhanced both the black population and black VAP of District 3. The description of Precinct One Hundred Ninety-One was amended to conform with the description of said precinct in the 1990 Census data. All of these precincts were amended or divided in accordance with the plan ordered to be submitted for preclearance by the Fifth Circuit. Resolution No. 69917 assigned polling places to these new precincts so that the voters affected would vote at the nearest existing polling places within their Council districts.

You suggested to me that the usual submittals for preclearance of the "routine" polling place changes were unnecessary if I could certify to you that none of the precincts affected contained black majorities. Accordingly, the 1990 Census data for these precincts are as follows

Precinct	Total	White	Black	Other	Black%
1-K	1,357	1,233	54	70	4%
38	1,147	1,135	1	11	0.087%
84	1,110	1,077	6	27	0.54%
185	1,189	1,051	27	111	2.3%
127	1,422	1,402	8	12	0.56%

The polling places in Precincts 1-K, 38, 84 and 127 were moved because the existing polling place lessors wished to give up the polling places. The polling place for Precinct 185 was moved because the previous location was outside of the precinct, and a suitable location within the precinct became available.

You also asked me to forward to you the voter registration information by Council districts, if available. I have been

informed by the Jefferson Parish Registrar of Voters that the State Department of Elections does not plan to change its computer program to reflect the new Council districts with the divided precincts until the district plan is precleared by your department. The State has already input into its computer the Special Master plan ordered by Judge Beer, and is not 'willing to undo that work until the plan ordered by the Fifth Circuit which overruled the Special Master's plan is precleared.

If you need this voter registration information for preclearance, I suggest that you contact Elsie Cangelosi with the Louisiana Department of Elections at (504) 925-7885. if you need any other additional information, please contact me at (504) 364-2711.

Yours truly,
/s/ Alan M. Gandolfi
Alan M. Gandolfi
Research Analyst

AMG/na

cc: Mr. James Arceneaux, Assistant Parish Attorney
Ms. Nan Alessandra, Attorney-at-law

APPENDIX H

PHELPS DUNBAR
Counsellors at Law
TEXACO CENTER
400 POYDRAS STREET
NEW ORLEANS, LOUISIANA 70130-3245
(504) 566-1311

FACSIMILES (504) 568-9130 AND (504) 568-9007
August 15, 1991

FEDERAL EXPRESS)7871656660

Gerald W. Jones, Esq.
Section Chief, Voting Section
Civil Rights Division
Department of Justice
320 First Street, N.W.
Room 716
Washington, D.C. 20534

Re: Submission of Redistricting Proposal by the Jefferson Parish Council for Expedited Preclearance Under Section 5 of the Voting Rights Act

Dear Mr. Jones:

On behalf of the Jefferson Parish Council for the Parish of Jefferson, Louisiana, we are submitting the enclosed redistricting proposal to the Department of Justice for preclearance under Section 5 of the Voting Rights Act, as

amended, 42 U.S.C. § 1973(c). A copy of this redistricting proposal was previously given to John Tanner of the Department of Justice on May 15th while he was in New Orleans attending a status conference in this case. You should be aware that Mr. Tanner is well-acquainted with the facts of this case.

We are requesting expedited consideration of the enclosed redistricting plan under Section 5 for a number of reasons. First, the qualifying period for the councilmanic elections is September 3-5, 1991, and the councilmanic elections are scheduled to occur on October 19, 1991. Second, the Jefferson Parish Council agreed with the plaintiffs in the matter styled, "East Jefferson Coalition for Leadership and Development, et al. v. The Parish of Jefferson, et al.," Civil Action No. 86-3668, to seek expedited preclearance of the enclosed redistricting plan under Section 5 and consequently, both plaintiffs and the Jefferson Parish Council are desirous of having expedited consideration. Finally, and perhaps more importantly, both the district and appellate courts have recently entered Orders directing the Jefferson Parish Council to seek expedited preclearance review. (A copy of the district court's Order is attached hereto as Exhibit "A" and a copy of the Fifth Circuit's order is attached hereto as Exhibit "H").

The enclosed redistricting proposal is being submitted in accordance with an agreement reached in the matter styled, "East Jefferson Coalition for Leadership and Development, et al. v. The Parish of Jefferson, et al.," Civil

Action No. 86-3668, in the United States District Court for the Eastern District of Louisiana. (A copy of the agreement reached with the plaintiffs in that action (which is styled as a "Joint Stipulation") is attached hereto as Exhibit "B")., The facts leading up to the execution of this Joint Stipulation are relatively simple. On March 21, 1991, the United States Fifth Circuit Court of Appeals affirmed the trial court's finding that the present councilmanic structure is in violation of Section 2 of the Voting Rights Act. At the close of its opinion, the Court of Appeal remanded the case to the lower court to "permit the district court to supervise prompt implementation of the redistricting plan." See, East Jefferson Coalition v. The Parish of Jefferson, 926 F.2d 495 (5th Cir. 1991). The redistricting plan referenced in the Fifth Circuit's opinion was a six-and-one councilmanic scheme, with six single-member districts and one at-large. The redistricting plan also included a black majority councilmanic district, namely, District 3. Under the 1980 Census, the black population in District 3 was 51.21% and the black voting age population was 50.12%.

The redistricting plan referenced in the Fifth Circuit's opinion had been submitted to the Department of Justice for Section 5 preclearance under cover of letter dated March 27, 1990. (A copy of the preclearance submission is attached hereto as Exhibit "C"). Subsequently, we provided further information to the Department of Justice delineating various demographic information pertinent to the black majority councilmanic district. (A copy of our supplemental correspondence to the Department of Justice is attached

hereto as Exhibit "D"). On May 10, 1990, the Department of Justice precleared the redistricting plan under Section 5. (A copy of the Notice of Preclearance is attached hereto as Exhibit "E"). Subsequent to preclearance from' the Department of Justice, the district court entered an order accepting the redistricting plan as a proposed remedy.

As noted, in its remand order, the Fifth Circuit directed the district court to supervise prompt implementation of the redistricting plan. On remand, the district court held a status conference, acknowledging that the plan had to be modified to accord with the population variances triggered by the 1990 Decennial Census. Additionally, the district court encouraged all parties to work together in formulating the necessary modifications in an expedited fashion, scheduling a May 15, 1991 deadline for submission of a modified redistricting plan. As noted, Mr. Tanner was in attendance at this conference.

Pursuant to the district court's directives, the Jefferson Parish Council, receiving suggestions from plaintiffs as to effectuating changes to the black majority councilmanic district, modified the redistricting plan to accord with various changes wrought by the 1990 Census. Specifically, by Resolution No. 69122, passed on May 8, 1991, the Jefferson Parish Council adopted a modified redistricting plan. The plaintiffs in the pending suit have reviewed the Jefferson Parish Council's redistricting plan

and have emphatically agreed not to object to the modified redistricting plan. Additionally, as noted, both plaintiffs and the Jefferson Parish Council entered into a Joint Stipulation agreeing that the Parish would make every effort to ensure that the councilmanic elections would be held timely under the May 8th plan, and that the Parish would seek expedited preclearance before the Department of Justice. (A copy of the Joint Stipulation is attached hereto as Exhibit "B").

The modified redistricting proposal retains the six-and-one councilmanic scheme, with six single-member councilmanic districts and one at-large seat. In keeping with the prior redistricting proposal, the plan also includes a black majority councilmanic district, District 3, with a black population of 60.33% and a black voting age population of 57.40%. (A copy of the Council Resolution accepting the May 8th redistricting plan, plaintiffs' response to the redistricting plan, as well as a map and other pertinent geographic and population data, is attached hereto, in globo, as Exhibit "F"). A legal description of the modified redistricting plan is being formulated and will be forwarded no later than Wednesday, August 21, 1991.

In accordance with the district court's prior directive that we submit a modified redistricting plan to the district court on May 15th, the Parish of Jefferson filed its modified plan with the district court in-conjunction with a memorandum of law in support of the Council's proposal. (See, Exhibit "F").

However, at a meeting held by the trial court on May 15, 1991, the district court rejected the modified redistricting plan and opted for the appointment of a special master to draw up a redistricting proposal for the Court. Shortly after the Court opted for the appointment of a special master, the plaintiffs requested the district court to order the Parish to abide by the terms of the Joint Stipulation and submit the May 8th plan to the Department of Justice for preclearance. The Parish of Jefferson orally informed plaintiffs' counsel that it would take no further action pursuant to the Joint Stipulation in the absence of a court order in view of the statements made by the trial court at the May 15th status conference. The trial court ultimately denied plaintiffs' request for an injunction, and the plaintiffs thereafter filed an appeal with the Fifth Circuit. On June 10th, the special master, Ms. Patricia Lowrey, submitted a redistricting plan to the district court containing a black councilmanic district with a 49% black voting age population. On July 24, 1991, the trial court entered a Judgment implementing the redistricting plan drawn by the special master.

On appeal, the Fifth Circuit approved the modified redistricting plan submitted by the Jefferson Parish Council. Accordingly, the Fifth Circuit reversed the trial court's July 24th Judgment, and thereafter remanded the case to the lower court. In its remand order, the Fifth Circuit instructed the trial court to issue an injunction directing the Parish of Jefferson to submit the May 8th plan to the Department of Justice for expedited review under Section 5 of the Voting Rights Act and thereafter to order implementation of the

May 8th plan immediately upon receipt of the notice of pre-clearance. (A copy of the Fifth Circuit's ruling is attached hereto as Exhibit "H"). Pursuant to the mandate of the Fifth Circuit, the district court has now issued a judgment in accordance therewith (see, Exhibit "A"), and the Parish has complied as expeditiously as possible.

The modified redistricting plan now being submitted maintains the present seven-member Council.[1] However, unlike the present councilmanic structure and in keeping with the previous redistricting plan which the Department of Justice approved, the seven-member Council will be comprised of six single-member districts (Districts 1-6, respectively) and one at-large. The black majority councilmanic district in this modified redistricting plan has a black population of 60.33% and a black voting age population of 57.40% under the 1990 Decennial Census. In formulating the black majority councilmanic district, we received input from the plaintiffs in the pending action and from John Tanner, who was previously involved in working with all parties on the previous redistricting plan submitted in March of 1990. During the course of confecting the necessary changes, we were informed that in order to avoid retrogression, it was essential that the modified redistricting plan

[1] The present councilmanic structure in Jefferson Parish is composed of a seven-member Council which is represented by one councilman from District 1, one from District 2, one from District 3, and one from District 4. Additionally, there are two members of the Council who represent Districts 1 and 2 and, Districts 3 and 4, respectively. The seventh Council member is elected at-large.

have a black voting age population of at least 53% in District 3, the black majority councilmanic district.[2] This plan clearly meets that standard.

In an effort to facilitate expedited preclearance, we have enclosed relevant demographic and mapping information, as well as pertinent pleadings from both the district and appellate courts. In view of the imminency of the qualifying period for the councilmanic elections, and in view of both the district and appellate courts' directives that we seek expedited preclearance, the Jefferson Parish Council respectfully requests the modified redistricting plan be given expedited consideration. As referenced in the Fifth Circuit's opinion (Exhibit "H"), the May 8th plan is to be implemented immediately by the district court upon receipt of notice of preclearance from the Department of Justice.

Please be advised that the modified redistricting plan has necessitated precinct changes and polling place changes. Under cover of letter dated August 13, 1991, these proposed changes were submitted to the Department of Justice for preclearance. (A copy of the cover letter forwarding that sub-

2. When the 1990 U.S. Census was superimposed on the redistricting plan previously precleared by the Department of Justice in May of 1990, the black voting age population is approximately 53%. We confirmed that 53% would be the retrogression benchmark under the Department of Justice's practice and policy. As evidenced in the modified redistricting plan, the Jefferson Parish Council has sought to avoid any retrogressive effect by having a black voting age population in District 3 of 57.40%.

mission is attached hereto as Exhibit "G"). We request that the August 13th submission be considered in conjunction with this submission on an expedited basis, since the elections will not be allowed to proceed if precinct changes and polling place changes are not precleared simultaneously with the modified redistricting plan.

Please note that we have also received word from a representative of the Secretary of State's office that the State Attorney General has stated that unless the Parish has received preclearance from the Department of Justice prior to September 3rd (the opening of the qualifying period), then councilmanic candidates will not be allowed to qualify in the new districts. This statement obviously provides but another compelling reason for expedited preclearance consideration.

If you should need any further information or documentation to facilitate your Section 5 preclearance determination, please do not hesitate to contact me.

Thanking you for your usual assistance, and with best regards, I remain,

Sincerely,
PHELPS DUNBAR

By: /S/ M. Nan Alessandra

M. Nan Alessandra
400 Poydras Street
29th Floor
New Orleans, LA 70130-3245
(504) 566-1311
(504) 584-9297

270/blg/9785s
Enclosures

cc: Hon. Peter H. Beer (w/o encls.)
M. David Gelfand, Esq. (w/o encls.)
Anthony Messina, Esq. (w/o encls.)
Members of the Jefferson Parish Council (w/o encls.)

APPENDIX I

Appellate Advocacy Program

Tulane Law School
6801 Freret Street
New Orleans, Louisiana 70116-5670
(504) 865-5732

M. David Gelfand
Director

Terry E. Allbritton
Associate Director

Eileen I. Ryan
Legal Assistant

May 10, 1991

M. Nan Alessandra
Phelps, Dunbar, Marks, Claverie & Sims
Texaco Center
400 Poydras Street
New Orleans, Louisiana 70130

RE: East Jefferson Coalition v. Parish of Jefferson

Dear Ms. Alessandra:

The black majority district proposed by the Parish of Jefferson in its Resolution of May 8, 1991, is not the only way to draw a black majority district cosistant with the 1990 census. Other plans, with a more compact and aesthetic district, could be drawn.

However, the Parish's plan is not unacceptable to plaintiffs, and we do not oppose it. Thank You.

Sincerely,
/S/ M. David Gelfand
M. DAVID GELFAND
Counsel for Plaintiffs

A Program of Tulane University School of Law

APPENDIX J

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M. David Gelfand
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Legal Assistant

May 10, 1991

John Tanner
DEPARTMENT OF JUSTICE
320 FIRST ST., N.W.
ROOM 716
WASHINGTON, DC 20035-6128

RE: East Jefferson Coalition v. Parish of Jefferson

Dear John:

As you know, I was very sorry to hear that you could not attend the June 24th hearing. I do appreciate your offering to confirm that you told both Nan and me that the benchmark for preclearance of a new plan would be the black VAP under the 1990 census, i.e. 52.3 percent in this case. We will both be describing our telephone conversations with you in our affidavits, as that information from you was a critical "ground rule" in our negotiations over the new plan. Hence, an affidavit from you would help.

Please find enclosed another copy of the special master's report. Please check Exhibit 4, which gives her statistics on her plan.

Thank You.

Sincerely,
/s/ David
M. David Gelfand

EXHIBIT K

FILED JUL 10 , 91

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

EAST JEFFERSON COALITION FOR LEADERSHTP, ETC, ET AL	*	CIVIL ACTION
versus	*	NO. 86-3668
	*	SECTION "M"
PARISH OF JEFFERSON, ETC, ET AL	*	

* * * * * * * * * * * * * *

TRANSCRIPT OF RULE 11 HEARING
JUNE 24, 1991, 4:00 PM
BEFORE THE HONORABLE PETER BEER
UNITED STATES DISTRICT JUDGE

APPEARANCES:
For the Plaintiff
Respondent: ALICE M. JACOBS, ESQUIRE
1421 N. Causeway Blvd., Suite 101
Metairie, Louisiana 70001-1874

JAMES K. GREEN, ESQUIRE
250 Australian Avenue South
Clearlake Centre, Suite 1300
West Palm Beach, Florida 33401

GAINSBURGH, BENJAMIN, FALLON,
DAVID & ATES
BY: ELDON E. FALLON, ESQUIRE
Energy Centre, Suite 2800
New Orleans, Louisiana 70160

For the Defendant
Respondent: Phelps Dunbar

BY: JAMES H. ROUSSEL, ESQUIRE
HARRY S. REDMON, JR.,
ESQUIRE
400 Poydras Street
30th Floor - Texaco.Center
New Orleans, Louisiana

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APPEARANCES (Continued):

For the Defendant
Respondent: RONALD J. RYCHLAK, ESQUIRE
University of Mississippi
University, Mississippi

Court Reporter: Rhonda J. Ballard, CSR
501 Magazine Street, Room 307
New Orleans, Louisiana 70130.
(504) 589-2861

concerned about Section 5, as well.
Q. Therefore, did you think you could accomplish your obligations with ministerial fine-tuning?
A. At that point I had no concept of what was involved. I had yet to sit down and look at any statistical information from the Parish. I was still contemplating my other avenues at this point.
Q. Did you believe the Judge had limited you to ministerial fine-tuning?
A. I think the Judge made it clear he liked the Plan that was in place. I don't think there was any doubt, I never doubted that for a second. I think the Council members liked it and we all realized once you impose that census we had to start readjusting those lines. We also realized we had the Department of Justice and the plaintiffs on the other side and we had to be cognizant of that as well.
Q. The deadline was set for May 15th. Was that also the date of the status to report to the Judge? of the status to report to the Judge?
A. my understanding, I think we were s.upposed to submit something to the Court at that time. something to the Court at that time.
Q. How did you go about preparing the new plan?

A. The first thing I did, I contacted some of the Parish representatives and my initial under standing was that the only thing I had to be concerned about was to get the one man one vote deviation since we were a legislative body we could go as

high as ten percent. That was one of my instructions. I thought we would be safe if we just had the a majority of the black voting age population in District 3. I thought that would satisfy Section 2 and Section 5. Our initial proposals, there might have been one or two, were based on trying to get that area in District 3 of a black voting age population of about fifty -- fifty-one percent. I had then at that time shown the figures, when you superimpose the figures of the 1990 census on that Plan, the six and one which had been the focal point of the Fifth Circuit opinion, there was a devia tion in districts, thirteen percent under the population ideal. In that close adjacent district, District 2, it was ten percent over the population ideal which indicated to me that we had a twenty-three percent population disparity over the population ideal and then I had to reduce that to ten percent. The first. proposals, I think we had tentatively scheduled a

meeting with the plaintiffs for April 29th. Between April 23rd which I think was the date of the Status Conference, and April 29th, just in that brief inter lude, there was a lot of newspaper coverage about exactly what was going on. I wrote a letter to the Judge because I was already concerned because it was a very one sided view of exactly what was going on. I copied opposing counsel and informed the Court I didn't want the negative press coverage to give any type of mischaracterization to what was basically transpiring. To put it quite succinctly, when we

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went to the April 29th meeting, that proposal which.was probably the closest to the Plan was not considered by the plaintiffs and then informed us at that time they had been in contact with the Department of justice

Q. First of all, the letter to the Judge was attached to your affidavit as Exhibit B, correct?

A. Right.

Q. Additionally, one of your very first plans then was superimposing the 1990 census on the existing Plan?

A. That is absolutely right. That was the one I told you that was fairly close, it was only, however,

a fifty or fifty-one 12 percent black V-A-P. Once you had done that, you looked at this first Plan, the 1990 census superimposed on the old Plan, you noted all these difficulties, you said that the Department of Justice would have problems with it. Any other problems you anticipated if you went for ward with that Plan?

A. According to the plaintiffs' counsel, at the April 29th meeting, they had already been engaged in conversations with the Justice representative, John Tanner, and according to Mr. Tanner, he was going to insist that the Parish of Jefferson have some type of benchmark of fifty-three percent.

Q. Benchmark meaning what?

A. According to the Department of Justice, they were going to conclude that any voting age popula tion in District 3 which was

less-than fifty-three percent would be retrogressive.

Q. Fifty-three percent?

A. Black voting age population. To be quite honest with you, I did not react very well to that. I was pretty angry. I didn't think it was fair.

Q. What did you do?

A. I contacted John Tanner at the Department of Justice that this plan was never

implemented, are you telling the Parish that not only do they have to come up with black majority districts we have to have a black V-A-P of fifty-three percent? I don't think I can do it. Then after that conversation ended, I went in and looked at annotations under Section 5, it wasn't answering my question about why are we being penalized with using this Plan as the benchmark for retrogression when there had been no implementation. I called him back on the phone and I said, I looked at these cases and they don't really say that I am supposed to use this Plan now as this new benchmark forgetting this black V-A-P up to fifty-three percent. Do you know how difficult this is in Jefferson Parish? He basically said, Ms. Alessandra, this is the Department of Justice policy and practice to do just that. I went back to the Parish, told them from all further proposals we were trying to confect, using that Plan as the benchmark, we had to have at least a fifty-three percent black V-A-P. If you came in with less than fifty-three percent the

Department of Justice would object and what else may it do?

A. The plaintiffs had already made it plain if we were going to go forward and submit the Plan to

the Court and the Department of Justice they were going to oppose it. There was also the historical perspective I had in the case. In 1989 I did the submission, we had had a proposal with about approximately fifty six percent black population and we had heeded a directive in the memorandum opinion of the Court that you didn't really need a super majority to satisfy the remedial requirements and we got up to the Department of Justice, when we interposed objection, they said that the fact that the plaintiffs had shown them other plans with the majority, indicated to them we were trying to minimize the black voting strife and I didn't want that to happen again.

Q. You didn't want that to happen because--

A. For one thing, the first time we submitted the Plan, that had nothing to do with what we were accomplishing at this point. It certainly didn't have anything to do with what I was trying to accomplish at this time.

Q. You were afraid it would impact on the Parish itself?

A. If we got opposition from the Department of Justice, it meant we were going to come back to the phase of having to draw up a new proposal, just going to delay the elections.

Q. So at that point you decided to draw new lines?

A. Right.

Q. In drawing new lines, did you think you were complying with the Fifth Circuit Mandate.

A. You read the Fifth Circuit Mandate, I have gone back over and done a chronology just in connection with everything that has transpired recently and it says "Prompt implementation of this Plan." You can't implement that Plan as it stands because it's just not valid under the one man one vote principle. Once you bring it into the one man one vote, the Department of Justice now steps in and is going to superimpose a new requirement which is very, very difficult and that is that fifty-three percent black V-A-P.

THE COURT:- I've got to tell you one thing here to put it on the record so that everybody knows where everybody is coming from. None of this was ever transmitted to this Court in any way, shape or form. In any way, shape or form. Furthermore, as far as I am concerned, this guy from the Department of Justice, Tanner, whatever his name is, has no more standing in this Court as far as any of this is concerned than any other attorney who is involved in this. The notion that some substitution should be made for this Court's action following a mandate from the U.S. Court of Appeals for the Fifth Circuit, based on what Mr. Tanner or whoever has to say or not say is absolutely unacceptable as to be just

ludicrous. It is important for this record and for you and for Ms. Alessandra to understand that none of this was never brought to

the Court's attention at all. The only thing that has ever been brought to the Court's attention was some statement by Tanner in the course of one meeting that he attended where I had any contact with him, he somehow seemed to indicate he had some standing that certainly was never accorded to him in any way, shape or form by this Court or by anyone else that has to do with the judicial process of the United States Court of Appeal for the Fifth Circuit or the United States District Court for the Eastern District of Louisiana.. So, whereas anyone may, of course, listen to anyone that they want to lis ten to, nothing that has been reported to this Court as coming from Mr. Tann:er has any standing as far as this Court is concerned whatsoever. I don't know if Mr. Tanner is present in Court. I wouldn't recognize him if I saw him. I do know that whatever he says has absolutely no standing as far as I am con cerned in this case in any manner whatsoever, inso far as the fulfillment of the Mandate from the U.S. Court of Appeals is concerned. This is a judicial

process. I want to disabuse everybody of any notion that anything that Tanner says or does has any official sanction or capacity or recognition by this Court in connection with the carrying out of the Mandate of the United States Court of Appeals for the Fifth Circuit or the directions of this Court. it is important that that be made clear to everybody at this juncture for indeed Mr. Tanner doesn't speak for this Court or for the Fifth Circuit or has

any recognition or standing before this Court in any manner whatsoever, in any way, shape or form.

MR. RYCHLAK: We're well aware of that. However, the Order to Show Cause attributes wrongful intent to my client and what we are bringing forth is she believed she had to get a pre clearance..

THE COURT: I think you are in order bringing that out in that context and I think it is material, but I also think it is important to clarify where some opinion from Tanner stands as far as this Court is concerned either with respect to the matter overall or with respect to the matter of this Show-Cause Order.

MR. RYCHLAK: I understand. I completely accept it for purposes we are offering it as complete-

ly relevant.
THE WITNESS: May I say something? In February of 1990 he was one of the people that appended to the affidavit, he came in to the Court and was actively involved in the confection of that Plan that was ultimately pre-cleared by the Department of Justice.
THE COURT: I understand that. Ma'am, that doesn't give him any standing as some kind of officer to direct your actions or those of the plaintiffs. He is nothing more or less than an employee of the Department of Justice.
THE WITNESS: I wanted to clarify my position of his involvement in this case has been very, very active from the

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Department of Justice from day one.
THE COURT: Okay, but you know my answer to that is what team did they ever lick? They don't have anything to do with this case as far as this Court and Your operations are concerned. They do their thing and we do ours. They don't have any standing here as far as I am concerned or as far as the Fifth Circuit is concerned to yeah or nay anything that this Court deals with in the ordinary course of the enforcement of its judicial processes. To assume that they do is an error that may very correctly be excusable, in the

sense of any ill will, but it certainly is important to have it clear that it has no standing here.

MR RYCHLAK: The other thing I would like to raise, Your Honor, is that it was directed by the Court that the defendant was to work with the plaintiff in putting this deal together and we had testimony already that says the plaintiffs were pointing to Tanner and saying we are not going to agree to any thing unless Tanner says it.

THE COURT: I'm not anymore enraptured with their overdignification of Tanner than your client. I'm just saying it isn't going to fly as a reason because he has no standing with respect to the judicial enforcement of judicial decrees of the Circuit or the District Court. None.

MR. RYCHLAK: We don't argue that he had supreme say here. I do say it greatly impacts on the intent of the

parties.

THE COURT: I understand that. I think it is material to the consideration of the whole Rule 11 proceeding. I don't quarrel with you for putting it in. I would be less than responsive to you all or frank with respect to the overall matter if I didn't address the points that I just addressed.

MR. RYCHLAK: I appreciate that, Your Honor.

BY MR. RYCHLAK:
Q. Picking up where we were, was there any intent to circumvent the Fifth Circuit Mandate?
A. Absolutely not.
Q. Any intent to disregard orders of the Court?
A. I was trying to do what we were instructed to do. Meet that May 15th deadline and get a plan I thought could be precleared and ultimately accepted by the Court.
Q. Did you, in fact, ultimately reach agreement with the plaintiffs, did you draw up a plan they were willing to go along with?
A. Basically at that point, on May 8th, by six to one Council vote, the Council said the Plan was acceptable. As I said before, Your Honor, there was an earlier proposal, had a much less black V-A-P and it was made clear by the plaintiffs they were going to vehemently object to that. We went back to the drawing board and ultimately came up with a plan that was passed six to one vote on May 8th. Two days after that I

received correspondence from plaintiffs' counsel indicating the Plan was not Acceptable. They also indicated that they would want me to agree to move for expedited pre-clearance from the Department of Justice and agree the elections would proceed.

We agreed to that. That was all on May 10th.
Q. How did you feel once the Council approved and the plaintiffs agreed?
A. Relieved. I thought we had done what we were obligated to do. I was eager to submit it to the Court.
Q. Did you, in fact, try to move up the status meeting?
A. I don't know if I was involved in that directly. My understanding from one of the plaintiffs' attorneys who contacted the Court's chambers and I think there was some Judicial Conference occurring and that wasn't feasible.
Q. 'Let's move now to the date of May 15th when the hearing was scheduled. What happened that morning?
A. I think that morning I did a very brief memorandum. Appending as an exhibit the modified Plan which the Council had accepted by resolution and I also appended some correspondence from the plaint office at approximately 11:39. Your Honor, you are absolutely correct that those papers I did not go into detail about retrogression, it was my idea that when I would meet with you later that day I would discuss the fact of retrogression, how the Department of Justice was basically had its nose in

everything we were doing and I didn't do that in the memorandum because I thought I would have an opportunity to talk about that later that afternoon to you. Why did you send the materials over before that meeting?

A. I at least wanted to give the Judge an opportunity to, before the meeting, to look at the modified Plan and ask me any questions that he might have as to why a line might have gone east instead of west, to ask me if he wanted me to go back to the drawing board or whatever, anything he wanted to ask me, I wanted him to have an opportunity before the Status Conference at 2:00 to look at that.

Q. Before noon a copy went to chambers and a copy was filed downstairs.

THE COURT: That is exactly right. I appreciated the courtesy. That doesn't, as far as I am concerned, make any difference, in my overall reaction to what took place. Her testimony is exactly correct on that point.

MR. RYCHLAK: There is a little more on this line.

BY MR. RYCHLAK:

Q. The hearing was schedule for 2:00. What time did you show up?

A. I got here about ten minutes to 2:00. I was walking down the corridor and I saw an acquaintance involved in the criminal sentencing procedure

with Judge Beer and I think there was a question as to who was going to go on first and I might have

APPENDIX L

Filed JUN 25 91

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

EAST JEFFERSON COALITION FOR LEADERSHIP AND DEVELOPMENT, ET AL.	* CIVIL * ACTION *
	* NO.
VERSUS	* 86-3668 *
THE PARISH OF JEFFERSON, ET AL.	* SECTION * "M" *MAG. DIV. 4

AFFIDAVIT OF M. NAN ALESSANDRA
IN OPPOSITION TO RULE TO SHOW
CAUSE WHY RULE 11 SANCTIONS
SHOULD NOT BE IMPOSED

STATE OF LOUISIANA
PARISH OF ORLEANS

BEFORE ME, the undersigned authority, personally came and appeared, **M. NAN ALESSANDRA**, who, being first duly sworn, did depose and say:

(1) That she is an attorney in the private practice of law and is a member of the firm of Phelps Dunbar and that she represents the Jefferson Parish Council in the above-referenced action;

(2) That she was graduated *cum laude* from Loyola Law School in 1985;

(3) That during her final year in law school she worked as an extern for the Honorable Martin L.C. Feldman,

* * *

(50) That when the 1990 U.S. Census figures were superimposed on the Plan, the population in District 3 was 13% under the population ideal. Moreover, in District 2, the adjacent district, the population was approximately 10% over the population ideal. Accordingly, there was approximately a 23% population deviation in the Plan by virtue of the 1990 Census. (The computer data furnished by Jefferson Parish supporting these figures is attached hereto as Exhibit "D");

(51) That in view of the impermissible population deviation set forth in the Plan, she sought to effectuate necessary changes in compliance with the constitutional mandate of one man, one vote, as well as the state statutory provision governing apportionment of districts in accordance with the 1990 decennial census. La. R.S. 33:1411. The end result was to obtain no more than a maximum population deviation of 10%, which is legally permissible. Her efforts to attain this goal were successful, since the total population deviation in the Modified Plan is 7.7%. (See, Exhibit "C" attached to defendants' Memorandum in Support of the Jefferson Parish Council's Proposed Modified Redistricting Plan submitted on May 15, 1991). She also sought to comply with the statutory mandate of Sections 5 and 2 of the Voting Rights Act in effecting necessary changes. First, Section 5 mandates that any change with respect to racial minority voting strength not have a retrogressive effect. In this case, when the 1990 Census figures were superimposed

on the Plan, there was a black voting age population in District 3 of approximately 53% (52.83%). (For the data substantiating these figures, *see* Exhibit "D");

(52) That in view of Section 5's prohibition against any retrogressive effect, she concluded that the Jefferson Parish Council could not implement any voting change to the councilmanic districts which would reduce the black voting age population in District 3 to less than 53%;

(53) That the 53% black voting age population bench mark was confirmed by conversations with the Department of Justice's representative, John Tanner, as well as an independent investigation of the controlling legal authorities, namely, Beer v. United States, 425 U.S. 130, 141 (1976), and City of Rome v. United States, 446 U.S. 156, 185 (1980);

(54) That achieving a 53% bench mark for black voting age population in District 3 was extremely difficult, particularly since District 3 had a population which was 13% under the population ideal;

(55) That initially, she did not think that the bench mark for retrogression would be set by superimposing the 1990 Census on the Plan, since the Plan had never in fact been implemented. However, according to John Tanner, it is the practice of the Department of Justice to do just that;

(56) That since she was convinced that no redistricting plan could pass muster under Section 5 unless the black majority district contained at least a 53% black voting age population, she informed representatives of

Jefferson Parish that a 53% black voting age population in District 3 was an essential prerequisite to any proposal;

(57) That aside from complying with Section 5, she also sought to comply with Section 2, which mandates that remedial relief under Section 2 contain a majority of black voters in a single-member district. See, Overton v. City of Austin, 871 F.2d 529 (5th Cir. 1989). Indeed, she had authored an article last year addressing the pronouncements in Overton regarding the scope of remedial relief under Section 2. (See, Alessandra, "Constitutional Law and Civil Rights," Fifth Circuit Symposium, 36 Loy. L. Rev. 719, 745-746 (1990));

(58) That she strove to maintain at least a majority voting age population in view of her prior involvement with the submission of one of the Parish's prior redistricting plans in 1989. Specifically, in September of 1989, the Parish had submitted a redistricting plan to the Department of Justice with a 46% black population. On November 10, 1989, the Department of Justice interposed an objection to the plan, noting that alternative plans had been proposed by others indicating that a black majority district could have been created. Although the Parish had heeded this Court's directive in its Memorandum Decision of July 12, 1988 (p. 32) that a proposed minority district did not require a majority of black voters, the Department of Justice nonetheless opined that the Parish's proposal of a 46% black population might well have been...

* * *

* * *

strength. For example, in the Modified Plan, there are approximately seven precinct divisions. In reference to Precincts 13K, 157, 174, 179 and 213, these precincts were divided to separate predominantly black areas from predominantly white areas in each of these respective precincts, for inclusion of these black areas in District 3. In reference to Precincts 1-L and 246, these precincts were divided to create "bridges" around the predominantly white portions of the Lafitte area, which is a predominantly white area, for inclusion of these portions in District 3, the black majority councilmanic district. Such precinct splits were based on policy choices of the Council -- choices which preserved the elected integrity of the Council itself;

(62) That the mandate of the Fifth Circuit indicated that the case was being remanded to the district court to supervise prompt implementation of the Plan. This Court realized on remand that changes had to be made. She understood that in order to implement the Plan, it was necessary that the Plan conform with the requisites of Sections 2 and 5 of the Voting Rights Act, as well as the constitutional precept of one man, one vote. She therefore acted to effect the necessary changes in accordance with these controlling legal authorities based on the facts presented;

(63) That she submits that the Joint Stipulation which was filed on May 15th was entered into pursuant to her honest representation of the interests of the Jefferson Parish Council and in full compliance with the mandate of the Fifth Circuit and the directives of this Court;

(64) That she has reviewed the Lowrey Plan and is convinced that the Lowrey Plan only serves to under-

score the fact that effecting necessary changes to the Plan was not a routine step;

(65) That she would further point out that she would never consider the Lowrey Plan as a viable option for the Parish. First, the Lowrey Plan has a black voting age population in District 3 of only 49.51%. Hence, the Lowrey Plan does not comport with the scope of remedial relief under Section 2. Second, the Parish had previously submitted a redistricting plan to the Department of Justice for preclearance in September of 1989. This proposal, containing a black population of 46%, was rejected by the Department of Justice on the grounds that alternative plans had been proposed in which a black majority district could have been created. The Department of Justice then concluded that the use of a 46% black population might well have been motivated by an invidious discriminatory purpose to minimize black voting strength. In view of this historical perspective, she would not have considered submitting the Lowrey Plan, since the proposed minority district does not have a black majority voting age population. Another reason ruling out the Lowrey Plan as a viable option is the fact that a 49.51% black voting age population has a retrogressive effect in violation of Section 5. The Department of Justice would not preclear this plan and she would have therefore been derelict in her duty if she had condoned any plan which fell underneath the 53% retrogression bench mark. She observed that the need to avoid retrogression and to maintain at least a 53% black voting age population in District 3 had a profound effect on the district lines in the Plan. Indeed, in view of the fact that the 1990 Census indicated that the population in District 3 was almost 13% under the population ideal, it was extremely difficult to attain a 53% black voting age population in that district. The ultimate effect of the need to

avoid retrogression was that the district lines had to be altered and the change of one district line necessarily had an effect on the others;

(66) That she was guided by the foregoing facts and legal principles, as well as this Court's directive that the parties work together, in entering into and signing the Joint Stipulation on May 15, 1991;

(67) That she did not enter into the Joint Stipulation for any improper purpose, but rather was guided by one objective: to ensure that any modifications to the Plan comported with the statutory directives of Sections 2 and 5 of the Voting Rights Act, the constitutional precept of one man, one vote, and the directives of this Court that these changes be effected in an expedited fashion with the agreement of counsel;

* * *